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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,003	12/20/2001	Robert Edward Weinstein	STL10375/40046.181USU1	2375
23552	7590	03/16/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			RODRIGUEZ, GLENDA P	
		ART UNIT	PAPER NUMBER	
		2651	DATE MAILED: 03/16/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/028,003	WEINSTEIN ET AL.
	Examiner	Art Unit
	Glenda P. Rodriguez	2651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-25 is/are allowed.
- 6) Claim(s) 26-28 is/are rejected.
- 7) Claim(s) 29 and 30 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cross (US Patent No. 6, 603, 617).

Regarding Claim 26, Cross teach a disc drive having a data storage disc rotatably mounted to a base plate and an actuator arm mounted on the base plate adjacent the disc, the disc drive comprising:

A transducer attached to the actuator arm operable to write data to and thereafter read data stored on a recordable media of the disc over a predetermined time period divided into a plurality of time intervals (Col. 5, Lines 64-66);

And means for determining whether the recordable media will be inoperable to store data at a predetermined time by measuring bit error rates for the media at specified interval points during the predetermined time period and estimating therefrom a bit error rate for the media at the predetermined time (Col. 7, Lines 28- to Col. 8, Line 15. Cross teaches a apparatus and method that reads and monitors the BER according at each time interval, which can be chosen by the user. The method verifies if the

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BER is inadequate (See Col. 8, Lines 42-52) and if it is unacceptable, it does a compensation scheme. It would have been obvious to a person of ordinary skill in the art, to instead of performing an compensation scheme as cited by Cross, to indicate that the performance of the drive to be unacceptable.).

Regarding Claim 27, Cross teach all the limitations of Claim 26. Cross fails to teach Cross also teaches that the predetermined time period of the drive may begin at the time of the test and may end at a predetermined time (Col. 7, Lines 28- to Col. 8, Line 15).

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cross (US Patent No. 6, 603, 317) as applied to claim 26 above, and further in view of Takeuchi (US Patent No. 6, 191, 905). Cross teach all the limitations of Claim 26. Cross fail to teach the computing a raw error value and a bit error rate at each specified interval. However, this feature is well known in the art as disclosed by Takeuchi, wherein it teaches that it measures the error and then calculates an average bit error rate at a specific measurement interval (Pat. No. 6, 191, 905; Col. 1, Line 66 to Col. 2, Line 7 and Col. 3, Lines 55-65). It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to modify Madsen et al.'s invention in order to reduce the error rate (Pat. No. 6, 191, 905; Col. 1, Lines 51-53).

***Allowable Subject Matter***

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Claims 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-25 are allowed.

Regarding Claims 1 and 15, the primary reason for allowance is the inclusion of the limitation of extrapolating the bit error rate values to create a decay graph representative of bit error rate changes for the disc media over the predetermined time period, wherein the decay graph links the predetermined time to an estimated bit error rate for the disc media.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenda P. Rodriguez whose telephone number is (703)305-8411. The examiner can normally be reached on Monday thru Thursday: 7:00-5:00; alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (703)308-4825. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
gpr  
March 8, 2004.

  
DAVID HUDSPETH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600